

Attorney Docket: 75095

Response to Office Action

After review of the examiner's rejection of all claims under 35 U.S.C. 103 (a) as being unpatentable over Gatts, the Applicant presents the following to overcome the examiner's rejections.

Examiner's comment:

"Gatts discloses classifying the body of a person (col. 7, lines 1-6), prescribing a first aerobic routine for the person (col. 7, lines 1-61)."

Cited Lines 1-6 of column 7 in Gatts only mention 3 specific body types: endomorph, mesomorph, and ectomorph, each of which are different from each of the 4 body types claimed by Applicant. The same sentence then goes on to list other specific physiological parameters ("percent overweight or underweight; body temperature; the resting blood pressure; resting pulse rate rhythms). All these parameters are required to be compiled and analyzed by a computer along with numerous other pulmonary and cardiac parameters. The Applicant is not claiming a method requiring the use of any of these parameters nor a computerized analysis.

Cited Lines 1-61 of columns 7 in Gatts defines an extensive list of parameters along with a complex computer analysis in order to prescribe a first aerobic routine for a particular person. Gatts describes a method and apparatus for a dynamic health test, evaluation and treatment.

The Applicant's invention of prescribing fitness programs are all based on how individuals are built differently and fall into one of his four trademarked body types; Hourglass, Spoon, Ruler and Cone shaped. Nothing in the methodology claimed by this invention suggests any measurement of one's physical condition, aerobic capacity, heart rate monitoring, and/or any measurements of any kind in relation to an individual's exercise or fitness level of any sort. This invention predicated on how different body types require different exercises to achieve a desired look or aesthetic goal. Nowhere in this application does it mention an individual's fitness level as a means to achieve his/her goals. Additionally, the Applicant does not even mention the need for measuring any form of one's fitness level or the like. The only measurements in this invention are certain girth measurements (in inches) on the human body to classify which body type one falls in, in order to determine the type of exercises needed to achieve his/her desired visual goals.

Contrary to Gatts, the Applicant's invention is not intended as a health test, nor intended to determine an exercise routine as a treatment. The Applicant's claims methods for determining a fitness program based on one of the four body types defined in the Application along with the desired fitness goals and levels.

Gatts, as well as the other prior art made of record by the examiner, all require medical measurements of different bodily parameters, and evaluate a particular exercise result by measurement again of physiological parameters. In addition, each of these cited patents is focused on obtaining a specific result tailored to a particular patient or individual.

As stated in MPEP 706.01(i):

"To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure."

Nothing in Gatts or the other cited prior art suggests a method requiring no physiological measurements (other than mere measurement of a body's dimension) to determine an exercise program. Nor are there any suggestions in Gatts or prior art of the four body types identified in this Application. Also, the prior art does not teach nor suggest all the claim limitations. None of the prior art teaches or suggests a method to determine an exercise program to achieve a desired physical look, nor a method to determine an exercise program without any physiological measurements.

The Applicant is claiming a method for individuals to determine an appropriate fitness program to meet their own goals based on their body type, which is defined by the Applicant. No medical measurement of any bodily function is required. It would not be obvious to someone skilled in the Art how to create an exercise program based on classifying someone into one of four body types (defined in the Application) and a desired visual goal for the person's body.

Based on the above, the Applicant respectfully requires Examiner's reconsideration of claims 1-32.

Respectfully submitted  
for Applicant,

By: D.J. Rafat  
Donald J. Rafat  
Reg. No. 53,501